

RECEIVED

APR 23 2014

MREC

SETTLEMENT AGREEMENT
BETWEEN
MISSOURI REAL ESTATE COMMISSION
AND
ERIC B. NICKISH

Eric Britton Nickish (Nickish) and the Missouri Real Estate Commission (MREC) enter into this Settlement Agreement for the purpose of resolving the question of whether Nickish's license as a real estate salesperson, no. 2010039523, will be subject to discipline. Pursuant to § 536.060, RSMo 2000,¹ the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri and, additionally, the right to a disciplinary hearing before the MREC under § 621.110, RSMo (Supp. 2013). The MREC and Nickish jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo (Supp. 2013).

Nickish acknowledges that he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing

¹ All statutory citations are to the 2000 Revised Statutes of Missouri unless otherwise noted.

against him at the hearing; the right to present evidence on his behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial administrative hearing commissioner concerning the charges pending against him; the right to a ruling on questions of law by the Administrative Hearing Commission; the right to a disciplinary hearing before the MREC at which time Nickish may present evidence in mitigation of discipline; the right to a claim for attorney fees and expenses; and the right to obtain judicial review of the decisions of the Administrative Hearing Commission and the MREC.

Being aware of these rights provided to him by law, Nickish knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document as they pertain to him.

Nickish acknowledges that he has received a copy of documents that were the basis upon which the MREC determined there was cause for discipline, along with citations to law and/or regulations the MREC believes were violated. Nickish stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the MREC that Nickish's license as a real estate salesperson, license no. 2010039523, is

subject to disciplinary action by the MREC in accordance with the relevant provisions of Chapter 621, RSMo, and Chapter 339, RSMo, as amended.

The parties stipulate and agree that the disciplinary order agreed to by the MREC and Nickish in Part II herein is based only on the agreement set out in Part I herein. Nickish understands that the MREC may take further disciplinary action against him based on facts or conduct not specifically mentioned in this document that are either now known to the MREC or may be discovered.

I.
Joint Stipulation of Facts and Conclusions of Law

Based upon the foregoing, the MREC and Nickish herein jointly stipulate to the following:

1. The MREC is an agency of the State of Missouri created and existing pursuant to § 339.120, RSMo (Supp. 2013) for the purpose of executing and enforcing the provisions of §§ 339.010 to 339.205 and §§ 339.710 to 339.855, RSMo (as amended), relating to real estate salespersons and brokers.
2. Eric Britton Nickish holds a Missouri real estate salesperson license, no. 2010039523.

3. In or around June 2011, Nickish began working for Equity Missouri LLC (Equity Missouri).

4. At that time, an application was completed to transfer Nickish's license from his old brokerage, Realty Exchange, Inc., to Equity Missouri. However, the application was never submitted to the MREC.

5. In September 2012, Nickish discovered that the MREC still had his license listed under Realty Exchange, Inc.

6. Nickish's license was transferred to Equity Missouri on October 4, 2012.

7. Between June 2011 and October 4, 2012, Nickish completed at least two real estate transactions and was paid commission on those transactions by Equity Missouri.

8. When the relationship between a salesperson and a broker ends, the broker must return the salesperson's license to the MREC within seventy-two hours of the termination of the relationship. 20 C.S.R. 2250-4.050(3). In order for the salesperson's license to be transferred to a new broker, the new broker must submit a transfer application to the MREC. 20 C.S.R. 2250-4.050(4).

9. Because Nickish's license was never transferred to Equity Missouri, he remained associated with Realty Exchange, Inc. between June 2011 and October 4, 2012.

10. Because Nickish represented Equity Missouri and received commissions from Equity Missouri while he was still associated with Realty Exchange, Inc., cause exists to discipline Nickish's license pursuant to § 339.100.2(11) and (12) RSMo (Supp. 2013), which state:

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621 against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

...

(11) Representing a real estate broker other than the broker with whom associated without the express written consent of the broker with whom associated;

(12) Accepting a commission or valuable consideration for the performance of any of the acts referred to in section 339.010 from any person except the broker with whom associated at the time the commission or valuable consideration was earned;

II.

Joint Agreed Disciplinary Order

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the MREC in this matter under the authority of § 536.060, RSMo, and § 621.045.4, RSMo (Supp. 2013) and § 621.110, RSMo (Supp. 2013).

1. Nickish agrees to pay a civil penalty of \$500.00 Said penalty is authorized under § 339.205, RSMo (Supp. 2013) and § 339.100(3), RSMo (Supp. 2013).

2. Nickish agrees to pay the \$500.00 civil penalty by certified check made payable to the “Missouri Real Estate Commission, State of Missouri” and mailed to Missouri Real Estate Commission, P.O. Box 1339, Jefferson City, MO 65102-1339. Nickish shall postmark and mail or hand deliver said check within 60 days of the date when this Settlement Agreement becomes effective.

3. Funds received pursuant to this agreement shall be handled in accordance with Section 7 of Article IX of the Missouri Constitution. § 339.205.8 RSMo (Supp. 2013).

4. In the event the MREC determines that Nickish has failed to pay any portion of the \$500.00 agreed upon herein or has violated any other term or condition of this Settlement Agreement, the MREC may, in its discretion: (1) notify the Attorney General who “may commence an action to recover the

amount of the penalty, including reasonable attorney fees and costs and a surcharge of fifteen percent of the penalty plus ten percent per annum on any amounts owed” under § 339.205.4, RSMo (Supp. 2013); (2) after an evidentiary hearing, vacate and set aside the penalty imposed herein and may probate, suspend, revoke, or otherwise lawfully discipline Nickish’s license under § 324.042, RSMo (Supp. 2013); and (3) deny, discipline, or refuse to renew or reinstate Nickish’s license under § 339.205.7, RSMo (Supp. 2013).

11. No additional discipline shall be imposed by the MREC pursuant to the preceding paragraph of this Settlement Agreement without notice and opportunity for hearing before the MREC as a contested case in accordance with the provisions of Chapter 536, RSMo.

12. This Settlement Agreement does not bind the MREC or restrict the remedies available to it concerning any future violations by Nickish of Chapter 339, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Settlement Agreement.

13. This Settlement Agreement does not bind the MREC or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Settlement Agreement that are either now known to the MREC or may be discovered.

14. If any alleged violation of this Settlement Agreement occurs during the disciplinary period, the parties agree that the MREC may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred and, if so, may impose further disciplinary action. Nickish agrees and stipulates that the MREC has continuing jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred.

15. Each party agrees to pay all their own fees and expenses incurred as a result of this case, its litigation, and/or its settlement.

16. The terms of this Settlement Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

17. The parties to this Settlement Agreement understand that the MREC will maintain this Settlement Agreement as an open record of the MREC as required by Chapters 324, 339, and 610, RSMo, as amended.

18. Nickish, together with his partners, heirs, assigns, agents, employees, representatives and attorneys, does hereby waive, release, acquit

and forever discharge the MREC, its respective members, employees, agents and attorneys including former members, employees, agents and attorneys, of, or from any liability, claim, actions, causes of action, fees, costs, expenses and compensation, including, but not limited to, any claim for attorney's fees and expenses, whether or not now known or contemplated, including, but not limited to, any claims pursuant to § 536.087, RSMo (as amended), or any claim arising under 42 U.S.C. § 1983, which now or in the future may be based upon, arise out of, or relate to any of the matters raised in this case or its litigation or from the negotiation or execution of this Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of the Settlement Agreement in that it survives in perpetuity even in the event that any court or administrative tribunal deems this agreement or any portion thereof void or unenforceable.

19. Nickish understands that he may, either at the time the Settlement Agreement is signed by all parties, or within fifteen days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Nickish's license. If Nickish desires the Administrative Hearing Commission to review this Settlement Agreement, Nickish may submit his request to: Administrative Hearing Commission, Truman State

Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65102.


20. If Nickish requests review, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the Settlement Agreement sets forth cause for disciplining Nickish's license. If the Administrative Hearing Commission issues an order stating that the Settlement Agreement does not set forth cause for discipline, then the MREC may proceed to seek discipline against Nickish as allowed by law. If Nickish does not request review by the Administrative Hearing Commission, this Settlement Agreement goes into effect fifteen days after the document is signed by the Executive Director of the MREC.

LICENSEE


Eric Britton Nickish

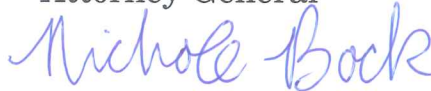
4/9/14
Date

MISSOURI REAL ESTATE
COMMISSION


Janet Carder, Executive Director
Date: 4/23/14

CHRIS KOSTER

Attorney General



NICHOLE BOCK

Assistant Attorney General
Missouri Bar No. 64222

Supreme Court Building
207 West High Street
P.O. Box 899
Jefferson City, MO 65102
Telephone: 573-751-4087
Telefax: 573-751-5660

Attorneys for the MREC